

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAIN WAGNER

Appeal No. 1999-0185
Application No. 08/583,481

HEARD: February 9, 2000

Before McCANDLISH, Senior Administrative Patent Judge, ABRAMS
and BAHR, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 2 through 10. No other claims are pending in the application.

Appellant's invention relates to a method of placing a payload in a desired orbit (claims 2-5 and 10) and to a vehicle such as a launcher for the payload (claims 6-9).

According to claim 10, the only independent method claim on appeal, a protective nose cone is ejected as one piece during a period in which the vehicle's propulsion thrust is interrupted. According to claim 6, the only independent vehicle claim on appeal, springs constitute the means for ejecting the single piece nose cone from the launcher.

A copy of the appealed claims is appended to appellant's brief.

The following reference is relied upon by the examiner as evidence of anticipation in support of his rejections under 35 U.S.C. § 102(b):

Johnson et al. (Johnson)	5,178,347
Jan. 12, 1993	

Claims 2 through 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Johnson. Reference is made to the examiner's answer for details of this rejection.

To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). It follows that the absence from the reference of any element of the claim negates anticipation

of that claim by the reference. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

In the present case, the nose cone shown in Figures 1-3 of the Johnson patent is not described in the specification or even identified by a reference numeral or reference character. The word "Speltra" in Figures 2 and 3 is not another term for a nose cone (i.e., a protective cone constituting the forward end of a rocket or a missile). Instead, the term "Speltra" is an acronym for the French language expression of "External Carrying Structure for Triple Launching of Ariane 5." See page 2 of appellant's reply brief and the published European patent application mentioned on page 2 of the reply brief.

Thus, the only disclosure of a nose cone in the Johnson patent is the outline of the cone shown in Figures 1-3 of the patent drawings. In Figures 5 and 6, which depict different operating sequences, the nose cone is not illustrated, thus indicating that the nose cone was jettisoned prior to the operating stage indicated at "a" in these Figures. Johnson's support part housing one or more of the payloads in the

launcher and identified by the acronym "Speltra" in Figures 5 and 6 is not a nose cone given the dictionary definition of the term "nose cone" as set forth supra and also on page 4 of appellant's main brief.

Accordingly, Johnson lacks a disclosure, express or inherent, of a single piece nose cone as recited in claims 6 and 10. More specifically, Johnson lacks a disclosure, express or inherent, of ejecting a nose cone as a single piece during a propulsion thrust interruption as recited in claim 10. In addition, Johnson lacks a disclosure, express or inherent, of utilizing springs to eject the nose cone as recited in claim 6. The springs mentioned in column 6, line 44, of Johnson's specification are for releasing the capsule, not the nose cone housing the capsule. Accordingly, the Johnson patent is not a proper anticipatory reference for the subject matter of claims 6 and 10 and hence for the claims that depend therefrom. See Kloster Speedsteel AB v. Crucible Inc., 793 F.2d at 1571, 230 USPQ at 84.

The examiner's decision rejecting claims 2 through 10 is
therefore reversed.

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

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